

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CITY OF HARTFORD and HARTFORD BOARD OF EDUCATION,	:	CIVIL ACTION NO.
	:	
	:	3:15-CV-01544 (RNC)
Plaintiffs,	:	
	:	JURY TRIAL DEMANDED
VS.	:	
	:	
MONSANTO COMPANY, SOLUTIA INC. and PHARMACIA CORPORATION,	:	
	:	
Defendants.	:	SEPTEMBER 23, 2016

**ANSWER AND AFFIRMATIVE DEFENSES OF SOLUTIA INC. TO PLAINTIFFS’
SECOND AMENDED COMPLAINT
AND JURY DEMAND**

Defendant Solutia Inc., (“Solutia”) answers Plaintiffs’ Second Amended Complaint (Dk#22) and asserts its affirmative defenses, through counsel. To the extent any subheadings or headings in the Second Amended Complaint are intended to allege disputed facts related to the above-captioned case, Solutia expressly denies any such allegations to the extent they are not addressed in its other Answers and denials set forth below.

I. INTRODUCTION

1. Solutia is presently without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 1 of the Second Amended Complaint and therefore denies the same.

2. Solutia admits that Pharmacia LLC (“Pharmacia”) manufactured PCBs in bulk and distributed PCBs under its trademarked name “Aroclor,” and that Aroclor 1248 and Aroclor 1254 were part of the Aroclor product line. Solutia denies that manufacture of Aroclor 1248 and 1254 were part of the Aroclor product line. Solutia denies that manufacture of Aroclor 1248 and 1254 was “unique to” Pharmacia. Solutia admits that Aroclors were used in some products by sophisticated users in the United States for a variety of potential applications, including potential plasticizer applications, depending upon the physical, chemical or other properties desired by the

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commercial customer. Pharmacia voluntarily ceased sales for PCB plasticizer applications as of August 1970, despite continuing customer demands for this useful product. Solutia denies all remaining allegations of paragraph 2.

3. Solutia admits that the products known as Aroclors 1248 and 1254 contained PCBs. Solutia denies the remaining allegations of paragraph 3.

4. Solutia denies the allegations of paragraph 4.

5. This paragraph asserts a definition used according to Plaintiffs' preference, to which no responsive pleading is required. To the extent Plaintiffs attempt to construe disputed facts by way of the definition in this paragraph, Solutia denies the allegations of paragraph 5.

6. Solutia admits that the Toxic Substances Control Act ("TSCA") was put in force in 1979 and that federal regulatory agencies thereafter promulgated regulations related to PCBs. Plaintiffs are charged with knowledge of such laws as of the dates of their enactment. The federal statutory and regulatory laws related to PCBs speak for themselves. Pharmacia voluntarily ceased the manufacture and sale of PCBs for plasticizers in 1970, nine years before regulations promulgated pursuant to EPA's rulemaking authority under TSCA's regulations became effective in 1979. And Pharmacia voluntarily discontinued the manufacture and sale of PCBs for essential electrical dielectric fluid applications in 1977, two years before regulations promulgated pursuant to EPA's rulemaking authority under TSCA became effective in 1979. Solutia denies all the remaining allegations of paragraph 6.

7. Paragraph 7 contains legal conclusions of the pleader and, as such, no answer is required. To the extent that this paragraph attempts to assert disputed facts related to matters in this lawsuit, Solutia denies the allegations of paragraph 7.

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II. PARTIES

8. Solutia is presently without sufficient knowledge to form a belief as the truth of the allegations of paragraph 8 of the Second Amended Complaint and therefore denies the same.

9. This paragraph asserts legal conclusions which require no responsive pleading. To the extent that this paragraph attempts to assert disputed facts related to matters in this lawsuit, Solutia denies the allegations of paragraph 9.

10. This paragraph asserts legal conclusions which require no responsive pleading. To the extent that this paragraph attempts to assert disputed facts related to matters in this lawsuit, Solutia denies the allegations of paragraph 10.

11. Solutia presently lacks sufficient knowledge to assess the truth of the allegations regarding the activities of Hartford's Board of Education ("Board") and therefore denies the same. The remainder of this paragraph asserts legal conclusions that require no responsive pleading. To the extent an answer is required, Solutia denies the remaining allegations of paragraph 11.

12. Solutia presently lacks sufficient knowledge to assess the truth of the allegations of this paragraph and therefore denies the same. In consequence, Solutia denies the allegations of paragraph 12.

13. The allegations contained in paragraph 14 are directed to a Defendant other than Solutia. As such, no response is required. To the extent a response is required, Solutia admits that the current Monsanto Company is incorporated under the laws of the State of Delaware with its principal place of business in St. Louis County, Missouri.

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14. Solutia admits that Solutia Inc. is incorporated under the laws of the State of Delaware with its principal place of business in St. Louis County, Missouri.

15. The allegations contained in paragraph 15 are directed to a Defendant other than Solutia. As such, no response is required. To the extent a response is required, Solutia admits that Pharmacia, LLC (f/k/a Pharmacia Corporation) is a limited liability company, that its sole member is Wyeth Holdings LLC and that Wyeth Holdings LLC is wholly owned by Pfizer Holdings Americas Corporation, which is incorporated under the laws of Delaware with its principal place of business in New York. Solutia denies the remaining allegations of paragraph 15.

16. Solutia admits that an entity formerly known as Monsanto Company (n/k/a Pharmacia) once operated agricultural, chemical, and pharmaceutical businesses, that the chemicals business was spun-off to Solutia in 1997, that since 2000 the company now known as Monsanto Company has operated the agricultural business, and that Pharmacia retained the pharmaceutical business. Solutia admits that Pharmacia commenced manufacturing PCBs in the 1930s under the name “Monsanto”; that Pharmacia voluntarily ceased manufacturing PCBs for uses other than as dielectric fluids in the early 1970s; and that Pharmacia voluntarily ceased manufacturing PCBs for dielectric fluids in 1977. Solutia denies all remaining allegations of paragraph 16.

17. Solutia incorporates its response to Paragraph 16 above and denies all remaining allegations of paragraph 17.

18. Solutia admits that Pharmacia’s commercial chemical business was transferred to Solutia in 1997 and that the rights and responsibilities of the parties to the transaction are detailed

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in various complex corporate transactional and legal documents publicly and otherwise made available to Plaintiffs, the terms of which speak for themselves. In consequence, no further responsive pleading is required. Further, Defendants' legal position concerning the proper characterization of these complex corporate documents has been previously provided to Plaintiffs' counsel (*see e.g.*, Doc. 134 in *Town of Lexington v. Pharmacia Corp., et al.*, C.A. No. 12-CV-11645 (D. Mass.)). Solutia denies all remaining allegations of paragraph 18.

19. Solutia admits that various indemnity agreements exist as spelled out in various complex corporate transactional and legal documents publicly and otherwise made available to Plaintiffs' counsel, the terms of which speak for themselves. In consequence, no further responsive pleading is required. Further, the legal position of the Defendants concerning the proper characterization of these complex corporate documents has been previously provided to Plaintiffs' counsel (*see e.g.*, Doc. 134 in *Town of Lexington v. Pharmacia Corp., et al.*, C.A. No. 12-CV-11645 (D. Mass.)). Solutia denies all remaining allegations of paragraph 19.

20. Solutia admits that Solutia filed a bankruptcy petition in 2003 and ultimately emerged from bankruptcy in 2008. The rights and responsibilities of the parties to the transaction are detailed in various complex corporate transactional and legal documents publicly and otherwise available to Plaintiffs, the terms of which speak for themselves. In consequence, no further responsive pleading is required. Further, the legal position of the Defendants concerning the proper characterization of these complex corporate documents has been previously provided to Plaintiffs' counsel (*see e.g.*, Doc. 134 in *Town of Lexington v. Pharmacia Corp., et al.*, C.A. No. 12-CV-11645 (D. Mass.)). Solutia denies all remaining allegations of paragraph 20.

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21. This paragraph asserts a definition used according to Plaintiffs' preference, to which no responsive pleading is required. Solutia admits that Plaintiffs (improperly) conflate the three separate and distinct corporate entities that they chose to sue and call them the "Defendants". To the extent that Plaintiffs attempt to assert disputed facts by way of the definition in this paragraph, Solutia denies the allegations of paragraph 21.

III. JURISDICTION AND VENUE

22. This paragraph asserts conclusions of law to which no responsive pleading is required; however, Solutia admits that this Court has diversity jurisdiction pursuant to 28 U.S.C. Section 1332, and incorporates its Answer and denials set forth in Paragraphs 13 to 15 above. Solutia denies all remaining allegations of paragraph 22.

23. This paragraph asserts conclusions of law to which no responsive pleading is required; however, Solutia admits that venue appears to be proper in this judicial district. To the extent that Plaintiffs assert disputed facts relevant to this lawsuit, Solutia has insufficient knowledge to admit or deny such facts and, in consequence, denies the remaining allegations of paragraph 23.

IV. FACTUAL ALLEGATIONS

24. Solutia admits that plasticizers were a useful component in other fully formulated or assembled products manufactured by sophisticated entities. Otherwise, Solutia lacks sufficient information either to admit or deny the remaining allegations of paragraph and, in consequence, denies the remaining allegations of paragraph 24.

25. Solutia admits that Pharmacia manufactured PCBs in bulk and distributed PCBs under the trademarked name "Aroclor." Solutia admits that Aroclors 1248 and 1254 contained

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PCBs. The PCB content, if any, of other Aroclors, is set forth in Technical and Application Bulletins, the contents of which speak for themselves. Solutia denies the remaining allegations of paragraph 25.

26. Solutia admits that PCBs were sold in bulk to sophisticated entities who were aware of the chemical and physical properties of PCBs, as detailed in Pharmacia's Technical and Application Bulletins. Solutia lacks sufficient information to admit or deny the remaining allegations of this paragraph and, in consequence, denies the remaining allegations of paragraph 26.

27. Solutia denies the allegations of paragraph 27.

28. Solutia denies the allegations of paragraph 28.

29. Solutia denies the allegations of paragraph 29.

30. Solutia admits that PCBs were distributed under the trademarked name "Aroclor" and that the PCBs were sold to sophisticated entities who were aware of the chemical and physical properties of PCBs, as detailed in Pharmacia's Technical and Application Bulletins. Such Bulletins included representative statements that "Aroclor compounds are a series of chlorinated biphenyls and chlorinated polyphenyls". Solutia denies all remaining allegations of paragraph 30.

31. Solutia denies the allegations of paragraph 31, with the exception that it admits that Pharmacia ceased manufacturing PCBs for uses other than as dielectric fluids in the early 1970s.

32. Solutia denies the allegations of paragraph 32.

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33. Solutia denies the allegations of paragraph 33, with the exception that Solutia admits that PCBs were purchased and used by a wide range of sophisticated entities (often other chemical companies, electrical companies, and manufacturers) in large part because they were highly stable and were excellent dielectric fluids.

34. Solutia lacks sufficient information to admit or deny the allegations of paragraph 34 and, in consequence, denies the allegations of this paragraph.

35. Solutia lacks sufficient information to admit or deny the allegations of paragraph 35 and, in consequence, denies the allegations of this paragraph.

36. Solutia denies the allegations of paragraph 36.

37. Solutia admits that, depending upon the nature of alleged exposure and dose, PCBs can, in theory, enter a human body. Solutia denies the remaining (overbroad and vague) allegations of paragraph 37.

38. Solutia denies the allegations of paragraph 38.

39. Solutia denies the allegations of paragraph 39.

40. Solutia admits that agencies such as the EPA and the International Agency for Research on Cancer (“IARC”) have published reports or promulgated regulations regarding PCBs, some of which include discussions about possible carcinogenicity in humans. Solutia denies that PCBs are carcinogenic or that EPA or any other regulatory agency or entity or person has established, based on good and reliable science, that PCBs are carcinogenic. Solutia denies all remaining allegations of paragraph 40.

41. Solutia denies the allegations of paragraph 41, with the exception that Solutia admits that EPA has promulgated regulations and published reports regarding PCBs, some of which refer to toxicity.

42. Solutia admits that the Agency for Toxic Substances and Disease Registry (“ATSDR”) has published statements regarding PCBs and possible human health effects. Solutia currently lacks sufficient knowledge at this time to admit or deny that the alleged quotation, without source or attachment, is attributable to the ATSDR and therefore denies the same. Further, the quotation is vague and ambiguous and appears on its face to assert no distinct factual conclusion. Solutia denies all remaining allegations of paragraph 42.

43. Solutia denies that non-contextual reference to the “toxicity” of a chemical, including of PCBs, has any meaning without information as to the nature and extent of exposure and dose. To the extent that the “1930s”-era documents exist, to which Plaintiff makes vague references without source or attachment, the contents will speak for themselves and no further responsive pleading is required. Solutia lacks sufficient information to admit or deny the remaining allegations of this paragraph and, in consequence, denies the remaining allegations of paragraph 43.

44. Solutia cannot admit or deny the allegations of this paragraph without specific reference to the document vaguely alluded to by Plaintiffs, which is not attached to the Second Amended Complaint, and, in consequence, Solutia denies the allegations of this paragraph. To the extent such a document exists, it will speak for itself. Solutia denies all remaining allegations of paragraph 44.

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45. Solutia admits that it warned against exposure to the fumes of PCBs heated to elevated temperatures (for example in capacitor ovens), warnings which have been produced to Plaintiffs' counsel. The terms and dates of such warnings will speak for themselves. Solutia denies all remaining allegations of paragraph 45.

46. With regard to "toxicity," Solutia incorporates its Answer and denials to Paragraph 43 above. To the extent the "1950s"-era documents exist, to which Plaintiffs vaguely make reference in this paragraph without source or attachment, the contents will speak for themselves and no further responsive pleading is required. Further, Solutia lacks sufficient information to admit or deny the truth of the remaining allegations of paragraph 46 and, in consequence, denies the same.

47. With regard to "toxicity," Solutia incorporates its Answer and denials to Paragraph 43 above. To the extent the documents exist, to which Plaintiffs vaguely make reference in this paragraph without source or attachment, the contents will speak for themselves and no further responsive pleading is required. Further, Solutia lacks sufficient information to admit or deny the truth of the remaining allegations of paragraph 47 and, in consequence, denies the same.

48. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the truth of the allegations of this paragraph, and therefore Solutia denies the allegations of paragraph 48. To the extent the document or documents exist, the contents will speak for themselves. Solutia further states that Plaintiffs' purported characterization of Dr. Kelly's purported actions or

inactions in response to unidentified document(s) appear to be inaccurate, subjective, and self-serving.

49. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph, and therefore Solutia denies the allegations of this paragraph. To the extent the document or documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 49.

50. Solutia denies the first sentence of paragraph 50. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the second and third sentences of this paragraph and therefore denies the factual allegations of the sentences, other than to note that the Plaintiffs' purported quotes appear incomplete and out of context. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 50.

51. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph, and therefore Solutia denies the allegations of this paragraph. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 51.

52. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the remaining allegations of this paragraph, and therefore Solutia denies the allegations of this paragraph. To

the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 52.

53. Solutia denies the allegations of paragraph 53.

54. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and therefore denies the allegations of this paragraph, other than to note that the Plaintiffs' purported quotes appear to be inaccurate, subjective, self-serving, and taken out of context. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 54.

55. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and therefore denies the allegations of this paragraph. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 55.

56. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and therefore denies the allegations of this paragraph. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 56.

57. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and therefore denies the allegations of this paragraph. To the extent the

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documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 57.

58. Solutia admits that it ceased manufacturing PCBs for uses other than as dielectric fluids in the early 1970s. Solutia denies the remaining allegations of paragraph 58.

59. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and therefore denies the allegations of this paragraph. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 59.

60. Solutia denies the allegations of paragraph 60.

61. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and therefore denies the allegations of this paragraph. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 61.

62. Solutia denies the allegations of the first sentence of this paragraph. Because Plaintiffs vaguely make reference to a document in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of the quotation in this paragraph and therefore denies the allegations of this paragraph. To the extent the documents exist, the contents will speak for themselves. Solutia denies all remaining allegations of paragraph 62.

63. Solutia denies the allegations of paragraph 63.

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64. Solutia lacks sufficient information to admit or deny the allegations in this paragraph. To the extent Plaintiffs seek to imply liability on the part of Pharmacia or any other Defendant, Solutia expressly denies the allegations of paragraph 64.

65. Solutia admits that federal legislation related to PCBs was put into effect in 1979. The remaining allegations of this paragraph attempt to construe or interpret issues of law and regulation, and therefore no further responsive pleading is required. To the extent an answer is deemed required, Solutia denies the remaining allegations of paragraph 65.

66. Solutia denies the allegations of this paragraph, except to admit that the federal EPA issued a press release in September 2009 related to caulk containing PCBs. The press release speaks for itself. Solutia denies all remaining allegations of paragraph 66.

67. Solutia denies the allegations of this paragraph, except to admit that the EPA issued a press release in December 2013, which speaks for itself, directed at fluorescent lighting with ballasts containing PCBs. Solutia denies all remaining allegations of paragraph 66.

68. The allegations of this paragraph attempt to construe conclusions of law to which no answer is required. To the extent an answer is deemed required, Solutia denies the allegations of paragraph 68.

69. Solutia denies the allegations of paragraph 69.

70. Solutia repeats and incorporates its responses to paragraphs 1, 8-12. Solutia denies all remaining allegations of paragraph 70.

71. Solutia is presently without sufficient knowledge to form a belief as the truth of the allegations concerning the date when Clark Elementary School was built and therefore denies

the same. Solutia expressly denies the last sentence of this paragraph. Solutia denies the remaining allegations of paragraph 71.

72. Solutia lacks sufficient information to admit or deny the allegations of this paragraph and, in consequence, denies the allegations of paragraph 72.

73. Solutia denies the allegations of paragraph 73.

74. This paragraph involves conclusions of law to which no responsive pleading is required. To the extent that any allegations of this paragraph may be construed as allegations of disputed facts, Solutia denies the allegations of paragraph 74.

75. This paragraph involves conclusions of law to which no responsive pleading is required. To the extent that any allegations of this paragraph may be construed as allegations of disputed facts, Solutia denies the allegations of paragraph 75.

76. Solutia is presently without sufficient knowledge to form a belief as the truth of the allegations concerning the date that Clark Elementary School was built and therefore denies the same. Solutia denies the remaining allegations of paragraph 76.

77. Solutia denies the allegations of paragraph 77.

78. Solutia denies the allegations of paragraph 78.

79. Solutia denies the allegations of paragraph 79.

FIRST CAUSE OF ACTION

CONNECTICUT PRODUCTS LIABILITY ACT STRICT LIABILITY

80. Solutia here incorporates by reference, as if fully restated here, its Answers and denials set forth in all preceding paragraphs.

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81. Solutia here incorporates its Answer and denials set forth in Paragraph 16 above. In addition, Solutia admits that PCBs were sold in bulk to sophisticated entities who were aware of the chemical and physical properties of PCBs, as detailed in Pharmacia's Technical and Application Bulletins and other communications. Solutia denies all remaining allegations in this paragraph 81.

82. Solutia denies the allegations of paragraph 82.

83. Solutia here incorporates its Answer and denials set forth in Paragraph 81 above. Solutia denies the remaining allegations of paragraph 83.

84. Because Plaintiffs vaguely make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and, in consequence, denies the allegations of this paragraph, other than to note that the Plaintiffs' purported quotations appear incomplete, self-serving, and out of context. To the extent that the documents to which Plaintiffs refer exist, their contents will speak for themselves along with additional documents that Defendants may choose to designate. Solutia denies all remaining allegations of paragraph 84.

85. Solutia denies the allegations of paragraph 85.

86. Solutia denies the allegations of paragraph 86.

87. Solutia here incorporates its Answer and denials set forth in Paragraph 81 above. Solutia expressly denies the remaining allegations of paragraph 87.

88. Solutia denies the allegations of paragraph 88.

89. Solutia denies the allegations of paragraph 89 and all its subparts.

90. Solutia denies the allegations of paragraph 90.

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91. Solutia denies the allegations of paragraph 81.

92. Solutia denies the allegations set forth in the second sentence of this paragraph.

Solutia is without sufficient information to either admit or deny the remaining allegations of this paragraph. In consequence, Solutia denies the remaining allegations of paragraph 92.

93. Solutia denies the allegations of paragraph 93.

94. Solutia denies the allegations of paragraph 94.

95. Solutia denies the allegations of paragraph 95.

96. Plaintiffs make inconsistent allegations as to when the at-issue school buildings or facilities were built in various iterations of their Complaint. Therefore Solutia here incorporates its Answers and denials to Paragraph 71 above and denies any allegations of this paragraph concerning the year the identified school buildings were built. Solutia denies the remaining allegations of paragraph 96.

97. Solutia denies the allegations of paragraph 97.

98. Solutia denies the allegations of paragraph 98.

99. Solutia denies the allegations of paragraph 99.

100. Solutia denies the allegations of paragraph 100.

101. Because Plaintiffs make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and, in consequence, denies the allegations of this paragraph, other than to note that the Plaintiffs' purported quotation appears to be self-serving interpolation. To the extent such a document exists, it will speak for itself. Solutia denies all remaining allegations of paragraph 101.

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102. Solutia states that because Plaintiffs make vague reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and, in consequence, denies the allegations of this paragraph. To the extent any document referenced in this paragraph exists, it will speak for itself. Solutia denies all remaining allegations of paragraph 102.

103. Because Plaintiffs make reference to a document in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and, in consequence, denies the allegations of this paragraph, other than to note that the Plaintiffs' purported quotation appears to be self-serving interpolation. To the extent such a document exists, it will speak for itself. Solutia denies all remaining allegations of paragraph 103.

104. Because Plaintiffs make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and, in consequence, denies the allegations of this paragraph, other than to note that the Plaintiffs' purported quotation appears to be self-serving interpolation. To the extent such a document exists, it will speak for itself. Solutia denies all remaining allegations of paragraph 104.

105. Because Plaintiffs make reference to documents in this paragraph without source citation or attachment, Solutia lacks sufficient information to admit or deny the allegations of this paragraph and, in consequence, denies the allegations of this paragraph, other than to note that the Plaintiffs' purported quotation appears to be self-serving interpolation. To the extent such

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documents exist, its contents will speak for themselves. Solutia denies all remaining allegations of paragraph 105.

- 106. Solutia denies the allegations of paragraph 106.
- 107. Solutia denies the allegations of paragraph 107.
- 108. Solutia denies the allegations of paragraph 108.
- 109. Solutia denies the allegations of paragraph 109.
- 110. Solutia denies the allegations of paragraph 110.
- 111. Solutia denies the allegations of paragraph 111.
- 112. Solutia denies the allegations of paragraph 112.
- 113. Solutia denies the allegations of paragraph 113 and all its subparts.
- 114. Solutia denies the allegations of paragraph 114.
- 115. Solutia denies the allegations of paragraph 115.
- 116. Solutia denies the allegations of paragraph 116.
- 117. Solutia denies the allegations of paragraph 117.
- 118. Solutia denies the allegations of paragraph 118.
- 119. Solutia denies the allegations of paragraph 119.
- 120. Solutia denies the allegations of paragraph 120.
- 121. Solutia denies the allegations of paragraph 121.
- 122. Solutia here incorporates its Answer and denials set forth in Paragraph 81 above.

Solutia lacks sufficient information to admit or deny the remaining allegations of this paragraph and, in consequence, denies the remaining allegations of paragraph 122.

- 123. Solutia denies the allegations of paragraph 123.

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124. Solutia denies the allegations of paragraph 124 and all subparts.

125. Solutia denies the allegations of paragraph 125.

126. Solutia denies the allegations of paragraph 126.

Solutia denies each and every allegation of the Second Amended Complaint not specifically admitted above.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs have failed to state a claim upon which relief may be granted.

Second Affirmative Defense

Plaintiffs' claims are barred by applicable statutes of limitations, or statutes of repose, or both, including but not limited to, Conn. Gen. Stat. §§ 52-577a and 52-577c.

Third Affirmative Defense

Plaintiffs' claims are preempted by federal law, including without limitation, the TSCA, the Federal Food, Drug, and Cosmetic Act (FDCA), and all their predecessors and amendments and any other applicable statutes or federal law. Specifically, Plaintiffs' claims are preempted under Article VI of the Constitution of the United States, by TSCA's express preemption provision 15 USC § 2617(a)(2)(B), FDCA's provision 21 USC § 346, and related statutory provisions and federal regulations implementing those laws.

Fourth Affirmative Defense

Plaintiffs' claims for breach of warranty fail because Plaintiffs did not transact any business with any Defendant in this civil action, and there is no privity between Plaintiffs and

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any Defendant, up to and including at the time when any schools at issue were substantially completed.

Fifth Affirmative Defense

Plaintiffs' claims for breach of warranty fail because any injury causing property damage at any school at issue in this civil action occurred prior to substantial completion of any such schools or facilities, and Solutia therefore did not impliedly warrant such products.

Sixth Affirmative Defense

Pharmacia sold PCBs in bulk for use as a component by sophisticated formulators and other assemblers of end products, many of whom were chemical companies or employed chemists and chemical engineers. These sophisticated users were at least as knowledgeable as Pharmacia regarding the risks and hazards, if any, associated with the use and disposal of the product and were in the best position to convey appropriate use, handling, and precautionary information and other warnings. Any duty to warn end users of formulated or fully assembled end products reposed in the sophisticated formulator or assembler – not Pharmacia or Solutia. Further, neither the current Monsanto Company nor Solutia could have owed any duties to warn, since neither of these defendants made, manufactured, or sold PCBs.¹

¹ Solutia first came into existence in 1997 and the current and present Monsanto Company first came into existence in 2000. Neither Solutia nor the present Monsanto ever manufactured or sold PCBs. For the detailed reasons previously provided to Plaintiffs' counsel (*see e.g.*, Doc. 134 in *Town of Lexington v. Pharmacia Corp., et al.*, C.A. No. 12-CV-11645 (D. Mass.)), neither Monsanto nor Solutia are directly liable in tort to Plaintiffs for any alleged acts or omissions of Pharmacia in relation to its manufacture and sale of PCBs between 1935 and 1977 or otherwise. Solutia and Monsanto each adopt and incorporate by reference each and every defense asserted by and concerning Pharmacia, without prejudice to any motions for summary judgment.

Seventh Affirmative Defense

Plaintiffs' claim for breach of implied warranty for an alleged design defect fails because PCBs as chemical compounds cannot be designed differently. Pharmacia sold PCBs in bulk for use as a component by formulators and other assemblers of products sold to end users. Solutia did not participate in the formulation, design, or assembly of the end products containing PCBs and bears no responsibility for their design.

Eighth Affirmative Defense

Plaintiffs' claim for breach of implied warranty for failure to warn fails because the nature of the formulations and fully assembled products, including quantities and synergies of chemicals, minerals, additives, and PCBs used, were unknown to Solutia. As Solutia did not participate in the formulations, design, or assembly of the end products containing PCBs, it bears no responsibility for warnings related to those products.

Ninth Affirmative Defense

Solutia's conduct (for which Plaintiffs also seek to hold Monsanto and Pharmacia liable) was at all times in conformity with the generally recognized state of scientific, medical, and technological knowledge (state of the art) that existed at the time that it prepared, issued, and distributed its safe-handling and warning materials for PCBs and PCB products allegedly at issue in this civil action. Further, Solutia's conduct at all times conformed to the state of the art existing at the time that the PCBs or PCB products allegedly at issue in this civil action were designed, manufactured, tested, packaged, labeled, sold, or distributed by the original Monsanto Company. Solutia's conduct and activities, including its warnings, were reasonable, prudent, and common in the industry, and they met any and all applicable standards.

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Tenth Affirmative Defense

Conduct is not to be determined by hindsight nor by what a party subsequently learns. At all relevant times, Solutia had no knowledge, either actual or constructive, and no reason to know of alleged propensities, if any, of the materials complained of in Plaintiffs' Second Amended Complaint, either of their alleged propensity to cause or contribute to any supposed injury or damage to property or to illnesses of any type. Solutia could not have acquired such knowledge by the application of reasonable, developed human skill and foresight.

Eleventh Affirmative Defense

Plaintiffs' claims and purported causes of action are barred in whole or in part by Connecticut's Modified Consumer Expectations Standard and its balancing test for risk versus utility. If it is determined that there was a risk inherent in the use of PCBs or any other product allegedly sold or supplied by Solutia, then such risk was outweighed by the benefits of PCBs or any other product allegedly at issue in this civil action.

Twelfth Affirmative Defense

Any PCBs at issue in this civil action were independently and materially altered and modified by others, within the meaning of Conn. Gen. Stat. § 52-572p, including by Plaintiffs or agents of Plaintiffs, over whom Solutia had no control.

Thirteenth Affirmative Defense

Solutia obtained all permits and licenses required by law and acted with due care and in accordance with federal, state, and local laws and regulations in effect at the time of any alleged acts or omissions at issue in this civil action. Retroactive application of statutes, regulations, or

case law to any alleged acts or omissions of Solutia is barred and violates the Constitution of the United States and all applicable State Constitutions, including that of the State of Connecticut.

Fourteenth Affirmative Defense

Plaintiffs' claims fail because their own conduct, alone or in conjunction with others unconnected to Solutia, was the sole proximate cause of the Plaintiffs' alleged property damage (if any). Further, any alleged act or omission of Solutia or anyone for whom Solutia is legally responsible was not a substantial factor in bringing about the alleged injuries and damages (if any) for which Plaintiffs seek recovery.

Fifteenth Affirmative Defense

Plaintiffs' negligence and breach of warranty claims fail because their alleged damages were caused by the acts and omissions of third persons over whom Solutia had neither control nor responsibility.

Sixteenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part due to their own negligent acts and omissions, including their failure to properly repair and maintain any and all public schools at issue in this civil action. To the extent that Plaintiffs' negligence does not bar recovery in its entirety, Plaintiffs' recovery must be proportionally reduced due to their negligence in accord with Conn. Gen. Stat. § 52-572h.

Seventeenth Affirmative Defense

Solutia is entitled to protections of the Connecticut Constitution and any and all other applicable state constitutional provisions, statutory provisions, and rules relating to the application of comparative fault principles.

Solutia Inc.'s Answer and Affirmative Defenses to Second Amended Complaint

Eighteenth Affirmative Defense

Plaintiffs' breach of warranty claims fail because they knowingly and unreasonably proceeded to use the end products about which they now complain in the face of state and federal statutes, regulations, municipal codes, and standard practices applicable to them and to their school buildings and facilities.

Nineteenth Affirmative Defense

Plaintiffs' claims are barred by the economic loss doctrine.

Twentieth Affirmative Defense

Plaintiffs' claims are barred because any alleged property damage arose from detailed specifications for the building products installed or applied at the school properties at issue in this civil action, including materials to be used in such products, promulgated by them, their contractors, and their architects.

Twenty-First Affirmative Defense

Plaintiffs failed to mitigate their damages.

Twenty-Second Affirmative Defense

Plaintiffs were expressly instructed by the Connecticut Department of Public Health that there was no immediate threat to human health from airborne PCBs contained in building products and that it did not need to undergo testing of any schools or facilities at issue in this civil litigation. Despite such advice, Plaintiffs knowingly and purposefully chose to undertake such testing and thereby willingly incurred their alleged monetary damages.

Twenty-Third Affirmative Defense

Plaintiffs' alleged damages are impermissibly remote and speculative.

Twenty-Fourth Affirmative Defense

To the extent any liability is assessed against Defendants, liability which Defendants expressly denied, Defendants pray for a determination and apportionment of fault among Plaintiffs, Defendants, and other persons or entities who may or may not be parties at the time any cause of action in this civil litigation is submitted to a jury or trier of fact and in accord with Conn. Gen. Stat. § 52-572o.

Twenty-Fifth Affirmative Defense

Solutia is entitled to set off any and all settlements reached by others in accord with Conn. Gen. Stat. § 52-572h(n).

Twenty-Sixth Affirmative Defense

Plaintiffs' claims for punitive damages, if granted, would violate the Eighth and Fourteenth Amendments of the Constitution of the United States and would also violate Article First and all other applicable provisions of the Constitution of the State of Connecticut because Plaintiffs' claims seek to impose an excessive fine upon the Defendants, are penal in nature, seek to punish Defendants under unconstitutionally vague standards, and violate due process.

Twenty-Seventh Affirmative Defense

No conduct, act, or omission of Defendants as alleged in the Second Amended Complaint was or is willful, wanton, malicious, reckless, fraudulent or done with a conscious disregard for the rights of Plaintiffs or for the safety of the public. Nor does any of the conduct, acts, or omissions of Solutia as alleged in the Second Amended Complaint demonstrate that Solutia acted with a high degree of moral culpability. Solutia exercised reasonable care at all times alleged in

the Second Amended Complaint and Plaintiffs fail to clearly establish any entitlement to punitive damages based on their allegations.

Twenty-Eighth Affirmative Defense

The Constitution of the United States and the Constitution of the State of Connecticut prohibit an award of punitive damages, where Plaintiffs impermissibly seek to hold an entity incorporated in 1997 (and discharged in bankruptcy in 2008) and an entity incorporated in 2000 liable for alleged acts and omissions of Solutia (which liability Defendants deny in any case), between 1935 and 1977.

Twenty-Ninth Affirmative Defense

To the extent Plaintiffs pleaded allegations of fraud, their claims fail to satisfy the specificity and particularity requirements of Fed. R. Civ. P. 9(b), being instead merely generic and conclusory allegations that fail to state a claim on which relief can be granted.

Thirtieth Affirmative Defense

Plaintiffs' claims are barred by the doctrines of estoppel, waiver, and laches, because they have delayed for an unreasonable period of time in filing and pursuing their alleged claims (among other reasons).

Thirty-First Affirmative Defense

Plaintiffs' theories of product liability sounding in breach of warranty are barred because Plaintiffs failed to give any Defendants timely notice of the alleged breach, thereby causing the Defendants undue prejudice.

Thirty-Second Affirmative Defense

Plaintiffs assumed the risk of injury in the use of any alleged products at issue in this civil action.

Thirty-Third Affirmative Defense

Solutia adopts all defenses and affirmative defenses pleaded by other Defendants or available under Connecticut law and reserves the right to plead additional affirmative defenses at such time it becomes aware of same due to its investigation and discovery in this civil action.

JURY DEMAND

Solutia demands a trial by jury on all claims and defenses triable by jury raised in this litigation.

WHEREFORE, Solutia requests that the Second Amended Complaint be dismissed at Plaintiffs' costs, with Solutia's costs and attorneys' fees reimbursed.

DEFENDANTS,

**MONSANTO COMPANY, SOLUTIA INC.
and PHARMACIA CORPORATION,**

By: /s/ Paul D. Williams

Paul D. Williams (ct05244)
pdwilliams@daypitney.com
Elizabeth C. Barton (ct07660)
ecbarton@daypitney.com
Michael Thad Allen (ct29813)
mallen@daypitney.com
Michael L. Miller (ct29137)
mlmiller@daypitney.com
Day Pitney LLP
242 Trumbull Street
Hartford, CT 06103-1212
(860) 275-0100
(860) 275-0343 (fax)

Their Attorneys

Solutia Inc.'s Answer and Affirmative Defenses to Second Amended Complaint

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2016, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Michael Thad Allen

Michael Thad Allen (ct29813)

mallen@daypitney.com

Day Pitney LLP

242 Trumbull Street

Hartford, CT 06103-1212

(860) 275-0100

(860) 275-0343 (fax)